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Mechanisms established by the General Assembly in the context of dispute prevention and settlement

Non-paper by the Secretariat

Introduction

1. The present non-paper is prepared in response to a request made during the 1999 session of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization in the context of a discussion on the proposal by Sierra Leone entitled "Establishment of a dispute settlement service offering or responding with its services early in disputes",[1] as complemented by the informal paper submitted by the United Kingdom of Great Britain and Northern Ireland,[2] that the Secretariat prepare an updated assessment regarding the status of various mechanisms at the disposal of the Secretary-General in the context of dispute prevention and settlement. It contains a brief analysis of legislative instruments of the General Assembly that have created specific mechanisms. It also addresses the question of the use of Special Representatives, envoys and related positions in the prevention and settlement of disputes in view of their expanded use in recent years.[3]

2. The mechanisms described in the present non-paper are at the disposal of the Security Council, the General Assembly and the Secretary-General in the exercise of their functions under the Charter of the United Nations as well as of Member States. In several instruments, the Secretary-General is ascribed specific administrative functions.

Existing mechanisms at the disposal of the Security Council, the General Assembly and the Secretary-General

(a) Resolution 268 (III) D of 28 April 1949

3. In the above resolution, the General Assembly decided to create a panel for inquiry and conciliation, noting the desirability, as shown by the experience of organs of the United Nations, of having qualified persons readily available to assist those organs in the settlement of disputes and situations by serving on commissions of inquiry or of conciliation.

4. The panel of persons having the highest qualifications was intended to be available "to any States involved in controversies and to the General Assembly, the Security Council and their subsidiary organs, when exercising their respective functions in relation to disputes and situations ...".

5. In paragraph 1 the General Assembly invited each Member State to designate from one to five persons who, by reason of their training, experience, character

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and standing, were deemed to be well-fitted to serve as members of commissions of inquiry or of conciliation and who would be disposed to serve in that capacity. Paragraph 2 directed the Secretary-General to take charge of the administrative arrangements connected with the composition and use of the panel. Ten articles relating to the composition and use of the panel were annexed to the resolution.

6. The panel remains dormant. It is worthwhile to note that information concerning the composition of the panel was periodically communicated by the Secretary-General to the General Assembly and the Security Council.[4]

7. In his 1964 report on methods of fact-finding,[5] the Secretary-General, without prejudice to the solution to the general question of the feasibility and desirability of establishing a special international body for fact-finding or of entrusting fact-finding responsibilities to an existing organization, recommended, *inter alia*, that the General Assembly should appeal to Member States to use the panel.

(b) Resolution 2329 (XXII) of 18 December 1967[6]

8. In the above resolution, the General Assembly, believing that an important contribution to the peaceful settlement of disputes and to the prevention of disputes could be made by providing for impartial fact-finding within the framework of international organizations and in bilateral and multilateral conventions or through other appropriate arrangements, invited Member States to take into consideration, in choosing means for the peaceful settlement of disputes, the possibility of entrusting the ascertainment of facts, whenever it appeared appropriate, to competent international organizations and bodies established by agreement between the parties concerned, in conformity with the principles of international law and the Charter of the United Nations or other relevant agreements.

9. In paragraph 4, the General Assembly requested the Secretary-General to prepare a register of experts in legal and other fields, whose services the States parties to a dispute might use by agreement for fact-finding in relation to the dispute, and requested Member States to nominate up to five of their nationals to be included in such a register.

10. The Secretary-General, in a circular letter dated 15 January 1968, requested Member States to submit to him names for inclusion in the register. Information concerning the register was periodically circulated to the General Assembly.[7] It would appear, however, that the register was never used and it is currently dormant.

(c) Decision 44/415 of 4 December 1989, annex

11. In the above decision, the General Assembly decided to bring to the attention of Member States a draft document on resort to a commission of good offices, mediation or conciliation within the United Nations. The document is annexed to the decision.

12. In paragraph 4 of the document, it was envisaged that the commission might be constituted of persons nominated by up to three States which were not parties to the dispute concerned; and such States would be designated, *inter alia*, as the case might be, by the President of the Security Council or by the President of the General Assembly or by the Secretary-General.

13. The document also foresaw some administrative functions for the Secretary-General in assisting a commission so constituted in carrying out its functions.

14. It would appear that this mechanism has not yet been utilized.

(d) Resolution 46/59 of 9 December 1991, annex[8]

15. Under the above resolution the General Assembly approved the Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security, urging that all efforts be made so that the Declaration became generally known and fully implemented.

16. Although the Declaration does not create a new mechanism, its importance lies in the affirmation that fact-finding missions may be undertaken by the Security Council, the General Assembly and the Secretary-General, in the context of their respective responsibilities for the maintenance of international peace and security in accordance with the Charter.

17. The Secretary-General was requested to prepare and update lists of experts in various fields who would be available for fact-finding missions. He was also requested to maintain and develop, within existing resources, capabilities for mounting emergency fact-finding missions.

18. The Declaration also avers that the Secretary-General should monitor the state of international peace and security regularly and systematically in order to

provide early warning of disputes or situations which might threaten international peace and security. To this end the Secretary-General was urged to make full use of the information-gathering capabilities of the Secretariat and to keep under review the improvement of those capabilities.[9]

(e) Resolution 47/120 of 18 December 1992

19. In the above resolution, the General Assembly, recognizing that preventive diplomacy might require such measures as confidence-building, early-warning, fact-finding and other measures in which consultations with Member States, discretion, confidentiality, objectivity and transparency should be combined as appropriate, emphasized the need to strengthen the capacity of the United Nations in the field of preventive diplomacy through, *inter alia*, allocating appropriate staff resources and financial resources for preventive diplomacy, in order to assist Member States to resolve their differences in a peaceful manner.

20. The General Assembly recalled, *inter alia*, resolution 2329 (XXII) and reaffirmed resolution 46/59 and its annex. It also recommended that the Secretary-General continue to utilize the services of eminent and qualified experts in fact-finding and other missions, selected on as wide a geographical basis as possible, taking into account candidates with the highest standards of efficiency, competence and integrity. In that regard, Member States were invited to submit names of suitable individuals whom the Secretary-General might wish to use at his discretion in fact-finding and other missions.

21. The Secretary-General established a list of eminent and qualified experts in 1993. Member States were invited to submit names of suitable individuals. The assistance of Missions, staff of the Secretariat and other eminent personalities was sought in this regard. Last year, the Secretariat commenced an exercise to update the list and to make the database user-friendly. The assistance of Missions, staff of the Secretariat and other eminent personalities was once again sought. The exercise is about to be completed and particular attention has been given to the inclusion of female candidates. The list is available for use by the Secretary-General in the exercise of his functions under the Charter.

22. In resolution 47/120, the General Assembly also encouraged the Secretary-General and the Security Council to engage at an early stage in close and continuous consultation in order to develop, on a case-by-case basis, an appropriate strategy for the peaceful settlement of specific disputes.

(f) Resolution 50/50 of 11 December 1995, annex

23. By the above resolution, the General Assembly adopted the United Nations Model Rules for the Conciliation of Disputes between States. Article 2, paragraph 2, of the Model Rules provides that if the States cannot reach agreement on the definition of the subject of the dispute, they may by mutual agreement request the assistance of the Secretary-General of the United Nations to resolve the difficulty.

24. The General Assembly also requested the Secretary-General, to the extent possible and in accordance with the relevant provisions of the Model Rules, to lend his assistance to the States resorting to conciliation on the basis of the Rules.[10]

(g) Special Representatives, envoys and other high-level positions

25. In his 1993 report to the General Assembly on the implementation of the recommendations contained in "An Agenda for Peace", the Secretary-General noted that there had been an expanded use of the procedures and methods for peaceful settlement of disputes under Chapter VI of the Charter. He observed that the following means, adapted on an ad hoc basis to each specific situation, were used: fact-finding missions; goodwill missions; special envoys/mediators; Friends of the Secretary-General; stationing of observers; and human rights monitoring. He pointed out that those means were intended primarily to collect reliable, first-hand information; to demonstrate the interest of the international community; to perform good offices functions; and to contribute to a climate of trust between all parties concerned and to encourage a sense of security.[11]

26. In his report on Special Representatives, envoys and related positions,[12] the Secretary-General gave three categories of Special Representatives and envoys:

(a) Special Representatives and other high-level positions in peacekeeping or observer missions authorized by the Security Council, appointed to implement the mandate approved by the Council;

(b) Envoys appointed to assist the Secretary-General in the exercise of his good offices and related functions. These appointments are either specifically recommended by the Security Council or the General Assembly or relate to issues or situations with which these principal organs are seized;

(c) Other special high-level positions. These consist of a small number of eminent and highly experienced officials appointed by the Secretary-General to assist him directly in the discharge of certain aspects of his responsibilities.

27. In his Supplement to "An Agenda for Peace", the Secretary-General described the "Friends of the Secretary-General ..." as follows:

> "A new trend in recent years has been the establishment of informal groups of Member States, created on an ad hoc basis to support the Secretary-General in the discharge of peacemaking and peacekeeping mandates entrusted to him ... They have no formal mandate from the General Assembly or the Security Council and comprise States with a particular interest in the conflict in question. They have material and diplomatic resources that can be used to support the Secretary-General's efforts. Their value to him is as a sounding board, as a source of ideas and comment and as a diplomatic instrument for bringing influence to bear on the parties.[13]

The Secretary-General maintained that under this arrangement he remained in the lead and was responsible to the relevant intergovernmental body.

Notes

[1] *Official Records of the General Assembly, Fifty-second Session, Supplement No.33* (A/52/33), para.75. See also A/48/398; A/49/33, para.109; A/50/33, para. 56; A/51/33, para.65; and A/53/33, para.105.

[2] Ibid., *Fifty-fourth Session, Supplement No.33* (A/54/33), para. 107.

[3] The non-paper does not deal with mechanisms established by the Security Council or by the Economic and Social Council and the other remaining principal organs; nor does it address the mechanisms established pursuant to international agreements and treaties or arrangements or mechanisms under existing regional arrangements. It is worthwhile to note, however, that some legislative instruments, other than those analysed in the present non-paper, could also be considered relevant in the context of a discussion on the proposal by Sierra Leone. These include the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV) annex); the Manila Declaration on the Peaceful Settlement of International Disputes (General Assembly resolution 37/10, annex); the Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations (General Assembly resolution 42/22, annex); the Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the Organization in this Field (General Assembly resolution 43/51, annex); and the Declaration on the Enhancement of Cooperation between the United Nations and Regional Arrangements or Agencies in the Maintenance of International Peace and Security (General Assembly resolution 49/57, annex). In addition, various reports and studies, prepared within the framework of the United Nations, could be considered to be relevant to the consideration of the Sierra Leone proposal. These include the reports of the Secretary-General on methods of fact-finding (A/5694 and A/6228); the report of the Secretary-General entitled "An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peacekeeping" (A/47/277-S/24111); the report of the Secretary-General on the implementation of the recommendations contained in "An Agenda for Peace" (A/47/965-S/25944); the Supplement to An Agenda for Peace: position paper of the Secretary-General on the occasion of the fiftieth anniversary of the United Nations (A/50/60-S/1995/1); the report of the Secretary-General entitled "Renewing the United Nations: A Programme for Reform" (A/51/950); the Millennium report, "We the peoples: the role of the United Nations in the twenty-first century" (A/54/2000); reports of the Secretary-General on the work of the Organization; as well as the *Handbook on Peaceful Settlement of Disputes between States* (OLA/COD/2394).

[4] Revised list of persons designated by Member States (A/4686-S/4632).

[5] See note 3.

[6] See also resolutions 1967 (XVIII), 2104 (XX) and 2182 (XXI).

[7] See A/7240, A/7751 and A/8108.

[8] See also resolutions 42/22 and 43/51. It is worth noting that in resolution 42/37 C of 30 November 1987, the General Assembly reiterated its concern about reports that chemical weapons had been used and over indications of their emergence in an increasing number of national arsenals, as well as about the growing risk

that they might be used again. In this connection, the Secretary-General was requested "to carry out investigations in response to reports that may be brought to his attention by any Member State concerning the possible use of chemical and bacteriological (biological) or toxin weapons ..."

Pursuant to the above objective, the Secretary-General was also requested, in resolution 42/37 C, to compile and maintain lists of qualified experts provided by Member States whose services could be made available at short notice to undertake such investigations, and of laboratories with the capability to undertake testing for the presence of agents the use of which was prohibited.

[9] S/23500; see also resolutions 47/120 and 50/50 and S/PRST/1999/34. It may be noted that in recent years the Secretariat has taken concrete steps to build and improve the capacity of the United Nations to respond effectively and efficiently in matters relating to conflict prevention. The Secretariat, as part of the ongoing reforms, has strengthened the cooperative mechanisms for policy direction, information sharing, planning and development of preventive measures for potential emergencies. These include the Executive Committee structure, the Interdepartmental Framework for Coordination (which now includes other members of the United Nations family), and the Prevention Team within the Department of Political Affairs. The Department of Political Affairs bears the primary responsibility for preventive action and peacemaking, focusing on more systematic, integrated and cooperative approaches. Its Policy Planning Unit is responsible for and has been engaged in the development of a comprehensive plan for a revived early-warning and prevention system for the United Nations. Other supportive initiatives include training intended to build United Nations capacity in early-warning and preventive measures, cooperation with regional organizations (including biennial meetings with the heads of such bodies), and the Trust Fund for Preventive Action.

[10] See also articles 10, 19 and 23.

[11] A/47/965-S/25944, para. 16.

[12] A/C.5/49/50. For a list of Special and Personal Representatives and envoys of the Secretary-General, see www.un.org/News/ossg/srsg.htm.

[13] A/50/60-S/1995/1, para. 83.